

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 EASTERN DIVISION
4

5 UNITED STATES OF AMERICA

6 vs.

CR. NO. 03-63-E

7 WENDALL JEFFERSON,

8 Defendant.
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13 HEARING ON MOTION TO SUPPRESS

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15 BEFORE THE HONORABLE VANZETTA PENN McPHERSON, UNITED
16 STATES MAGISTRATE JUDGE, at Montgomery, Alabama, on Thursday,
17 May 29, 2003, commencing at 9:00 a.m.

18 APPEARANCES:

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25 Proceedings reported stenographically;
transcript produced by computer.

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11 (The following proceedings were heard before the Honorable
12 Vanzetta Penn McPherson, United States Magistrate Judge, at
13 Montgomery, Alabama, on Thursday, May 29, 2003, commencing
14 at 9:00 a.m.:)

15 (Call to Order of the Court)

16 THE COURT: United States of America versus Wendall
17 Jefferson, Case Number 03-63-E. This proceeding is an
18 evidentiary hearing on the defendant's motion to suppress
19 evidence in this criminal felony case.

20 Counsel, first of all, let me thank you for your
21 willingness to accommodate my need to reschedule today's
22 hearing.

23 Is the government ready to proceed?

24 MS. REDMOND: Yes, ma'am.

25 THE COURT: And is the defendant ready to proceed?

<p style="text-align: right;">3</p> <p>1 MS. COOPER: Yes, Your Honor.</p> <p>2 THE COURT: The defendant's motion for suppression of</p> <p>3 the evidence of a stop which occurred on 6 December 2002 was</p> <p>4 filed on 14 May 2003. The government's response was filed on 23</p> <p>5 May 2003. The defendant grounds his motion on unreasonableness</p> <p>6 of the stop and the search without a warrant. The defendant</p> <p>7 alleges that the officer had no probable cause to stop him.</p> <p>8 How many persons are expected to testify as witnesses?</p> <p>9 MS. REDMOND: For the government, we intend on calling</p> <p>10 two witnesses, Your Honor.</p> <p>11 THE COURT: And Ms. Cooper?</p> <p>12 MS. COOPER: Your Honor, I have three witnesses.</p> <p>13 THE COURT: All persons who expect to testify as</p> <p>14 witnesses, please approach the bar here in front of the bench,</p> <p>15 raise your right hands to be sworn.</p> <p>16 (Off-the-record discussion)</p> <p>17 THE CLERK: Would all witnesses please come to the</p> <p>18 courtroom? They're in the back. She's got -- her witnesses are</p> <p>19 in the conference room. If y'all will come forward up here,</p> <p>20 please, we're going to swear you in.</p> <p>21 (Prospective witnesses are sworn)</p> <p>22 THE CLERK: Thank you. Y'all may return to the room,</p> <p>23 please. Thank you.</p> <p>24 THE COURT: Ms. Redmond.</p> <p>25 MS. REDMOND: Your Honor, before we begin, the</p>	<p style="text-align: right;">5</p> <p>1 proprietary interest in the vehicle.</p> <p>2 MS. COOPER: That's correct, Your Honor. He was</p> <p>3 driving the vehicle shortly before the investigatory stop.</p> <p>4 THE COURT: Is there any factual dispute that the</p> <p>5 investigatory stop occurred after the defendant exited the</p> <p>6 vehicle?</p> <p>7 MS. COOPER: It is my belief, Your Honor, that the</p> <p>8 defendant was en route from the business known as Head to Toe</p> <p>9 back -- walking back to his vehicle when the investigatory stop</p> <p>10 took place.</p> <p>11 THE COURT: So you agree that the investigatory stop</p> <p>12 occurred outside the vehicle and outside a building.</p> <p>13 MS. COOPER: It was outside the building, Your Honor.</p> <p>14 It's my belief Ms. Hawk was already in her vehicle --</p> <p>15 THE COURT: I understand that. Here's what I'm asking</p> <p>16 you. Did the investigatory stop occur while Mr. Jefferson was</p> <p>17 outside of the vehicle?</p> <p>18 MS. COOPER: Yes, ma'am, I believe so.</p> <p>19 THE COURT: Okay.</p> <p>20 MS. COOPER: If it please the Court, may I speak?</p> <p>21 THE COURT: Yes.</p> <p>22 MS. COOPER: Your Honor, based upon my analysis of the</p> <p>23 case and the investigatory stop, I believe that there are three</p> <p>24 issues before the Court. Mr. Jefferson respectfully submits</p> <p>25 that the investigatory stop of his person was illegal, not based</p>
<p style="text-align: right;">4</p> <p>1 government would renew its motion under United States v.</p> <p>2 Richardson in that in the defendant's motion to suppress, the</p> <p>3 defendant admits that he was not in fact stopped, that he</p> <p>4 voluntarily had stopped his vehicle and removed himself from his</p> <p>5 vehicle. In addition, the government would argue that the</p> <p>6 search of the vehicle, the business, and the home was given --</p> <p>7 was done pursuant to consent to search given by Jennifer Hawk,</p> <p>8 who was the wife -- or who is the wife of the defendant, and who</p> <p>9 also has a proprietary interest in all of those -- both the</p> <p>10 business, the house, and the vehicle, and that any statements</p> <p>11 made by the defendant were made not under interrogation but were</p> <p>12 made -- were spontaneous statements against interest.</p> <p>13 THE COURT: Let's establish some facts, then, based</p> <p>14 upon the government's motion.</p> <p>15 Ms. Cooper, is there any factual dispute regarding</p> <p>16 Mr. Jefferson's wife's proprietary interest in the car? Does</p> <p>17 she have a proprietary interest in the car?</p> <p>18 MS. COOPER: Actually, Your Honor, it's my</p> <p>19 understanding that the vehicle in which the original contraband</p> <p>20 was located is the property of Ms. Hawk's grandmother and was at</p> <p>21 the time of the arrest.</p> <p>22 THE COURT: That is to say it was registered in the</p> <p>23 name of Ms. Hawk's grandmother.</p> <p>24 MS. COOPER: Yes, ma'am.</p> <p>25 THE COURT: So the defendant himself had at the time no</p>	<p style="text-align: right;">6</p> <p>1 upon any reasonable suspicion that criminal activity was afoot.</p> <p>2 Judge, it's my belief that based on an investigatory stop that</p> <p>3 is illegal, if the Court finds that to be a fact beyond a</p> <p>4 preponderance of the evidence, at that point, Judge, I believe</p> <p>5 the analysis can stop. And according to the fruit of the</p> <p>6 poisonous tree, all illegal substances found would at that time</p> <p>7 be allowed to be suppressed. If the Court finds that the</p> <p>8 analysis needs to continue past the investigatory stop, it is my</p> <p>9 belief that the second issue arises in that we believe there was</p> <p>10 no valid consent to search the vehicle where the initial</p> <p>11 contraband was found. Additionally, Judge, if that particular</p> <p>12 analysis needs to go further from that point, we believe that</p> <p>13 the written consent that followed to search the business and the</p> <p>14 homeplace was also not valid but was the product of coercion and</p> <p>15 duress. And we believe that through the evidence, that will be</p> <p>16 proven to the Court today.</p> <p>17 THE COURT: Thank you.</p> <p>18 MS. REDMOND: Your Honor, if I may?</p> <p>19 THE COURT: Ms. Redmond.</p> <p>20 MS. REDMOND: Of course, the government's argument</p> <p>21 would be, number one, there was no investigatory stop. The</p> <p>22 defendant parked his vehicle, left his vehicle, was returning</p> <p>23 when officers approached, which rises to nothing more than a</p> <p>24 consensual encounter. It is at that point that Ms. Hawk, who is</p> <p>25 in the vehicle in which the contraband was located, removes</p>

<p style="text-align: right;">7</p> <p>1 herself voluntarily and makes contact with one of the agents --</p> <p>2 and that would be Agent Price -- and gives consent, oral</p> <p>3 consent, to search that vehicle so that there is no</p> <p>4 investigatory stop of Mr. Jefferson and that nothing out of the</p> <p>5 contact made with Mr. Jefferson triggers the search. It is</p> <p>6 simply the consent to search given by Ms. Hawk that triggers the</p> <p>7 initial search of the vehicle.</p> <p>8 The government does concede that once that vehicle is</p> <p>9 searched, all of the subjects present, including -- to include</p> <p>10 Ms. Hawk, Mr. Jefferson, and a second female, are placed under</p> <p>11 arrest. And after Ms. Hawk is mirandized, she gives consent to</p> <p>12 search the -- and that's a written consent to search -- of the</p> <p>13 business located on Martin Luther King -- I believe it's Parkway</p> <p>14 and the residence and in fact gives the address of the residence</p> <p>15 to search.</p> <p>16 MS. COOPER: Your Honor, I don't mean to --</p> <p>17 THE COURT: I'm not going to hear any more argument.</p> <p>18 We're going to proceed. I have some difficulty, Ms. Cooper,</p> <p>19 with the defendant's ability to overcome the hurdle created by</p> <p>20 these three things. One, the stop occurred while he was</p> <p>21 outside --</p> <p>22 (Brief interruption)</p> <p>23 THE COURT: The cord is so short.</p> <p>24 In any case, I have some difficulty understanding how</p> <p>25 the defendant will overcome these three hurdles. Number one,</p>	<p style="text-align: right;">9</p> <p>1 THE COURT: Proceed.</p> <p>2 DAVID JASON WHITTEN, the witness, having been</p> <p>3 previously sworn, testified, as follows:</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MS. REDMOND:</p> <p>6 Q. Would you state your full name and place of employment?</p> <p>7 A. Sergeant David Jason Whitten. I'm employed by the Phenix</p> <p>8 City Police Department.</p> <p>9 Q. Is that Phenix City, Alabama?</p> <p>10 A. Yes, ma'am. Phenix City, Alabama.</p> <p>11 Q. Is Phenix City Alabama within the Middle District of</p> <p>12 Alabama?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. And Agent Whitten, are you -- what do you do with the Phenix</p> <p>15 City Police Department?</p> <p>16 A. I'm currently assigned to the Metro Narcotics Task Force.</p> <p>17 Q. What is the Metro Narcotics Task Force?</p> <p>18 A. Metro Narcotics Task Force is a multijurisdictional task</p> <p>19 force made up --</p> <p>20 Q. Let me ask you this. Can you slow down a little bit? The</p> <p>21 court reporter needs to take down everything you say.</p> <p>22 A. Yes, ma'am. It is a multijurisdictional task force that is</p> <p>23 made up of Phenix City Police Department; Russell County</p> <p>24 Sheriff's Department, Alabama; Muscogee County Sheriff's</p> <p>25 Department --</p>
<p style="text-align: right;">8</p> <p>1 the stop occurred while he was outside both the building and the</p> <p>2 vehicle. And I know that there was no search of the building,</p> <p>3 but that the stop occurred while he was outside, that he was not</p> <p>4 asked by or coerced by any officer to leave the vehicle. Number</p> <p>5 two, that the vehicle that was searched did not belong to the</p> <p>6 defendant. Therefore, I have some concern about the defendant's</p> <p>7 standing to challenge a search of a vehicle in which he has no</p> <p>8 proprietary interest and from which he was not forcibly</p> <p>9 removed. Number three, I have some concern about the</p> <p>10 defendant's standing to challenge consent given to the search by</p> <p>11 one who was a passenger in the vehicle and whose grandmother</p> <p>12 owned the vehicle. So those are the hurdles that I -- that the</p> <p>13 Court has some difficulty understanding how the defendant will</p> <p>14 overcome. So I would appreciate it if you, all of you, would</p> <p>15 focus the testimony in those areas, because that's where the</p> <p>16 Court is really thinking about. Thank you.</p> <p>17 Proceed, Ms. Redmond.</p> <p>18 MS. REDMOND: The government calls Agent Jason Whitten.</p> <p>19 THE CLERK: Whitten?</p> <p>20 MS. REDMOND: Whitten.</p> <p>21 THE COURT: Would you spell --</p> <p>22 THE CLERK: Jason Whitten, please come to the</p> <p>23 courtroom.</p> <p>24 THE COURT: Ms. Redmond, please spell his name.</p> <p>25 MS. REDMOND: I'm sorry. W-H-I-T-T-E-N.</p>	<p style="text-align: right;">10</p> <p>1 Q. Would you spell that, please, if you can?</p> <p>2 A. M-U-S-C-O-K-E --</p> <p>3 THE COURT: G. G-E. Muscogee.</p> <p>4 THE WITNESS: Yes, ma'am.</p> <p>5 THE COURT: Where Columbus is located?</p> <p>6 THE WITNESS: Yes, ma'am.</p> <p>7 A. -- Columbus Police Department, which is also in Georgia;</p> <p>8 Harris County Police -- Sheriff's Department, which is also in</p> <p>9 Georgia.</p> <p>10 Q. Is there anyone else?</p> <p>11 A. No, ma'am.</p> <p>12 Q. All right.</p> <p>13 A. And we work middle- to upper-level narcotic and vice</p> <p>14 investigations.</p> <p>15 Q. In December of 2002, were you involved in an investigation</p> <p>16 which had as its focus a person named Wendall Jefferson?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. And on or about December 6th, did you make contact with</p> <p>19 Mr. Jefferson?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. How did that come about? And if you could, would you start</p> <p>22 from your first action on December 6th?</p> <p>23 A. Myself and other agents from the Metro Narcotics Task Force</p> <p>24 were in the area of 431 South, which is also known as Martin</p> <p>25 Luther King Parkway in Phenix City, Russell County, Alabama. We</p>

<p style="text-align: right;">11</p> <p>1 were conducting surveillance in the parking lot of a strip mall, 2 and this strip mall contained a business which was known to us 3 as Head to Toe Studio. 4 Q. Why were you conducting surveillance on Head to Toe Studios? 5 A. We had received information that a subject by the name of 6 Wendall Jefferson was an owner of a business in that -- 7 MS. COOPER: Objection, Your Honor. Although I realize 8 that hearsay is allowed in suppression hearings in federal 9 court, I believe that the hearsay needs to be shown to be 10 reliable. 11 MS. REDMOND: Judge, I think -- 12 THE COURT: The objection is overruled. 13 Q. Continue, please. 14 THE COURT: He's stating the reason why he was there. 15 And Ms. Cooper, when you object or speak to the Court, 16 please stand. 17 Q. (Ms. Redmond, continuing:) Would you continue, please? 18 A. I had received information from several sources that 19 Mr. Jefferson was operating a business at this location and was 20 selling cocaine from the business. 21 Q. Are you aware or were you aware at the time of whether or 22 not Mr. Jefferson was the sole owner of Head to Toe Studios? 23 A. At this time, no, ma'am. 24 Q. What, if anything, did you do on December 6th, 2002, in 25 relation to Head to Toe Studios and the investigation on</p>	<p style="text-align: right;">13</p> <p>1 Q. How many agents were with you at that time? 2 A. There were myself and three others. 3 Q. And you had indicated to the Court that you were conducting 4 surveillance. How were you conducting surveillance? 5 A. We were just sitting in the vehicle watching the business. 6 Q. One vehicle? 7 A. Yes, ma'am. 8 Q. What, if anything, did you see on December 6th, 2002? 9 A. There were two females inside the business that appeared to 10 be pacing back and forth to the door and back to the business. 11 At one point, a -- one vehicle pulled in. Two subjects went to 12 the door and then went back into the rear of the business. They 13 appeared to be waiting on someone. 14 Q. What happened next? 15 A. We just continued to watch. And after about ten minutes, a 16 maroon Chevy vehicle, late-model vehicle, arrived at the 17 business. 18 Q. What occurred then? 19 A. A subject that I recognized as Wendall Jefferson exited the 20 vehicle and walked to the front door of the business. The two 21 females inside the business exited the vehicle (sic), and 22 Mr. Jefferson locked the door of the business. 23 Q. You had indicated that you recognized Mr. Jefferson; is that 24 correct? 25 A. Yes, ma'am.</p>
<p style="text-align: right;">12</p> <p>1 Mr. Jefferson? 2 A. Myself and the other agents were in an undercover police car 3 parked in the parking lot just observing the business and 4 observing activities going on in the business. 5 Q. About what time did you set up your surveillance? 6 A. It was approximately 8:30 at night, 8:20 at night. 7 Q. Is the area clearly lit? 8 A. Yes, ma'am. 9 Q. Could you see the business? 10 A. Yes, ma'am. 11 Q. Was the business -- did the business appear to be inhabited? 12 A. There were some lights on inside the business, but it didn't 13 appear to be open. 14 Q. What, if anything else, did you notice while you were 15 conducting surveillance about either Head to Toe studios or that 16 strip mall area? 17 A. On this particular night, what was different about it was 18 there was two individuals inside the business. All the other 19 times that we had set up surveillance on the business, there was 20 never any lights on and never no one inside the business. 21 Q. Did you make contact at that point with any of the 22 individuals in the business? 23 A. No, ma'am. 24 Q. Did you go into the business at all? 25 A. No, ma'am.</p>	<p style="text-align: right;">14</p> <p>1 Q. Have you had previous contact with Mr. Jefferson? 2 A. Yes, ma'am, I have. 3 Q. Is that actual contact, physical contact, you and 4 Mr. Jefferson know each other? 5 A. I had occasion to meet Mr. Jefferson some years back in 6 E. K. Garrett Apartments, which is in Phenix City, Alabama. And 7 I also had a recent photograph of Mr. Jefferson. 8 THE COURT: What were the circumstances under which you 9 previously encountered him? 10 THE WITNESS: Your Honor, if I remember correctly, it 11 was an alcohol offense where he was released to his mother in 12 E. K. Garrett Apartments, which is in Phenix City. 13 THE COURT: Was he a minor at the time? 14 THE WITNESS: Yes, ma'am. I believe he was a minor at 15 the time. I believe he resided in Barbour County at the time. 16 It was several years ago. 17 THE COURT: Thank you. 18 Q. (Ms. Redmond, continuing:) All right. You said that 19 Mr. Jefferson exited his vehicle, went up to the business, and 20 two females exited the business? 21 A. Yes, ma'am. And Mr. Jefferson locked the door. 22 Q. I'm unclear about this. Did you say earlier that you had 23 seen the two females inside the business and two other people 24 had come into the business? 25 A. No, ma'am.</p>

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<p style="text-align: right;">15</p> <p>1 Q. I'm sorry. All right. It was just the two females that 2 were in the business. 3 A. Yes, ma'am. 4 Q. All right. And they exited the business; is that correct? 5 A. Yes, ma'am. 6 Q. What did they do or what did you see them do? 7 A. Ms. Jefferson went to the driver's side -- I mean Ms. Hawk, 8 Mr. Jefferson's wife, went to the driver's side of the vehicle 9 that Mr. Jefferson arrived in. 10 Q. Okay. Where did the other female go? 11 A. She walked to a car that was parked next to this. 12 Q. Do you have a description of that vehicle? 13 A. I don't recall the kind of vehicle she was getting in, just 14 the one Ms. Hawk was getting in. 15 Q. What, if anything, did you see Mr. Jefferson do after he 16 locked the business? 17 A. He appeared to go to the -- he seemed like he was going to 18 walk to the passenger side of the same vehicle that he pulled up 19 in. 20 Q. That's the late-model Chevrolet -- 21 A. Yes, ma'am. 22 Q. -- that Ms. Hawk had gotten into the driver's side? 23 A. Yes, ma'am. 24 Q. And did he in fact get into the vehicle? 25 A. No, ma'am.</p>	<p style="text-align: right;">17</p> <p>1 A. The parking lot has a row of parking spaces that face the 2 straight -- it's a straight strip mall, and there is a row of 3 parking facing the storefronts. Then across the parking lot 4 there is another parking -- another line of parking that is the 5 same direction, just the other side of the parking lot. 6 MS. REDMOND: Please excuse me, Your Honor. The 7 defense has a picture that I think might help illustrate what 8 the witness is speaking about. 9 (Brief pause) 10 Q. Agent Whitten, I have placed on the machine something that 11 has been -- an exhibit that's been marked as Plaintiff's Exhibit 12 #1, previously marked as Defendant's Exhibit #1, and ask you if 13 you recognize this exhibit. 14 A. Yes, ma'am. 15 Q. What is that, please? 16 A. That is the parking lot and strip mall that I mentioned 17 earlier. 18 Q. And if you can -- and I think you can use your finger to 19 circle. Would you circle the business that you were surveilling 20 that evening? 21 THE COURT: Hold on. Let's go off the record. 22 (Brief interruption) 23 THE COURT: Back on the record. 24 Q. Agent Whitten, I have placed an X over part of that exhibit 25 and ask you if you can identify that area that is marked by the</p>
<p style="text-align: right;">16</p> <p>1 Q. What did he do? 2 A. He looked at our vehicle and observed us, changed his 3 direction, and started going across the parking lot to another 4 vehicle that was parked on the other side of the parking lot. 5 Q. Is that the vehicle that the second female got into or went 6 to? 7 A. No, ma'am. It was a third vehicle. 8 Q. All right. Let me go back for just a moment. Were you in a 9 marked vehicle? 10 A. No, ma'am. 11 Q. Would you describe to the Court the vehicle that you were 12 in? 13 A. It was a 2000 or 2001 white Ford Expedition. 14 Q. Did it have tinted windows? 15 A. I believe the rear windows of it were tinted. The front 16 windows weren't. 17 Q. How did -- I'm sorry. 18 THE COURT: I'm sorry. 19 MS. REDMOND: I'm sorry, Your Honor. 20 THE COURT: Please excuse me. Did you say you were in 21 a marked vehicle? 22 THE WITNESS: No, ma'am. We were in an unmarked 23 vehicle. 24 Q. In conducting your surveillance, would you tell the Court 25 which way your vehicle was positioned?</p>	<p style="text-align: right;">18</p> <p>1 X. 2 A. Yes, ma'am. 3 Q. What is that area? 4 A. That is the businesses -- business that this incident 5 occurred at. 6 Q. And can you -- and by using this exhibit -- 7 MS. REDMOND: And actually, let me go back one moment, 8 Your Honor. The government moves to have admitted into evidence 9 Plaintiff's Exhibit #1, which is also marked as Defendant's 10 Exhibit #1. 11 THE COURT: Let's call it Government's Exhibit #1. 12 MS. REDMOND: We'll call it Government's Exhibit #1, 13 Your Honor. 14 THE COURT: Any objection? 15 MS. COOPER: No objection. 16 THE COURT: Government's Exhibit #1 is admitted. 17 Q. (Ms. Redmond, continuing:) Agent Whitten, if you -- looking 18 at your screen, were you to the right or the left in setting up 19 surveillance -- or in surveilling this business -- of the 20 screen? 21 A. The business next to it is Blimpee's. Do you see that 22 business? 23 Q. Yes, sir. 24 A. Okay. The -- there's a row of parking that's facing the 25 building that's -- that runs parallel with the building, and</p>

6 (Pages 15 to 18)

<p style="text-align: right;">19</p> <p>1 then there's another one to the rear of the parking lot that 2 faces and parallels the building. 3 Q. All right. If you would, look to the right side of your 4 screen. There appears to be at the far edge of the screen a 5 vehicle. 6 A. Uh-huh. 7 Q. Is that what you're talking about when you talked about the 8 back row of parking? 9 A. Yes, ma'am. 10 Q. All right. And you had mentioned Blimpee's. Where were 11 you -- were you on the back row or the second row in front of 12 Blimpee's surveilling the business? 13 A. Yes, ma'am. Approximately two parking spaces over, one or 14 two parking places over. 15 Q. Agent Whitten, I see on the exhibit what appears to be an 16 electrical pole; is that correct? 17 A. Yes, ma'am. 18 Q. All right. You were -- were you two spaces over from that 19 pole? 20 A. Yes, ma'am. 21 Q. On that row that the pole sits on? 22 A. Yes, ma'am. 23 Q. Were you -- I'm going to mark this exhibit. With the 24 exception of it looking as though it were on the grass, is that 25 approximately the area that you were in when surveilling?</p>	<p style="text-align: right;">21</p> <p>1 A. Yes, ma'am. 2 Q. All right. Where was the second woman that exited the 3 business? You had indicated that she went to a second vehicle. 4 Where was that vehicle located? 5 A. It was parked next to the vehicle that Mr. Jefferson arrives 6 in -- arrived in. 7 Q. The one Ms. Hawk is now in. 8 A. Yes, ma'am. 9 Q. Okay. What happens when Mr. Jefferson -- what actions do 10 you take when Mr. Jefferson goes to this third vehicle? 11 A. At this point, based on him noticing us, we decided to 12 approach Mr. Jefferson and make contact with him. 13 Q. How were you dressed? 14 A. I was dressed in blue jeans, a T-shirt, and I had what we 15 refer to as a raid vest on that was clearly marked police and 16 metro narcotics. 17 Q. Did you say a ray vest? 18 A. Yes, ma'am. 19 Q. R-A-Y? 20 A. Raid. 21 Q. Raid vest. R-A-I-D? 22 A. Yes, ma'am. 23 Q. All right. And how many other officers were with you? 24 A. There were one -- there was four of us in the vehicle. 25 Myself and Agent Nemmo walked toward the older Chevy Caprice</p>
<p style="text-align: right;">20</p> <p>1 A. Yes, ma'am. 2 Q. All right. Where were you in the vehicle? 3 A. I was in the passenger side backseat. 4 Q. And I'd asked you before whether or not that area was 5 well-lit at the time you were out there. What was your response? 6 A. Yes, ma'am. 7 Q. Where was the vehicle that Ms. Hawk had entered in relation 8 and in terms of this exhibit? Can you give us an idea? 9 A. It was on the front row of parking, just to the -- if you're 10 looking at the picture, just to the right of the front door at 11 the left. 12 Q. I've placed an X. Would that X approximately mark -- 13 A. Maybe a little bit more to the right, I believe, where the 14 parking spaces were, but basically right there. 15 Q. All right. You'd indicated that Mr. Jefferson, upon going 16 to the passenger side of the vehicle Ms. Hawk was in, appeared 17 to notice your vehicle; is that correct? 18 A. Yes, ma'am. 19 Q. What, if anything, did Mr. Jefferson do when it appeared he 20 noticed you-all sitting in the vehicle? 21 A. He walked across the parking lot to the other side of the 22 entrance, the same row that we were parked on, and approached a 23 vehicle that was parked on that side. 24 Q. Okay. So in the same row, the second row that you-all are 25 parked on, he walked over to a third vehicle?</p>	<p style="text-align: right;">22</p> <p>1 that Mr. Jefferson was approaching. 2 Q. That's the third vehicle. 3 A. Yes, ma'am. 4 Q. All right. Did you have your weapons drawn? 5 A. No, ma'am. 6 Q. Okay. What, if anything, did you do in approaching 7 Mr. Jefferson? 8 A. Approached Mr. Jefferson and identified myself, asked -- was 9 going to speak to him about some information that we had that he 10 was involved in some narcotics being sold from that business and 11 from his vehicle. 12 Q. You said that that was your purpose. Did you have an 13 opportunity to have that discussion with him? 14 A. No, ma'am. 15 Q. Why? 16 A. As myself and Agent John Nemmo approached Mr. Jefferson, 17 Mr. Jefferson hurriedly attempted to make it to the rear of the 18 vehicle and was told to remove his hand from his pocket several 19 times. 20 Q. And did he comply with that? 21 A. Once he tried to make it to the rear of the vehicle, based 22 on information that I had received about Mr. Jefferson and for 23 officer safety, I did not let him make it to the rear of the 24 vehicle. 25 Q. What was your belief at that time?</p>

<p style="text-align: right;">23</p> <p>1 A. That possibly he was going for a weapon or attempting to 2 run. 3 Q. All right. And what, if anything, did you do in terms of 4 Mr. Jefferson at that point? 5 A. Asked Mr. Jefferson to remove his hand from his pocket, 6 asked him if he had any weapons on his person. Agent Nemmo also 7 had asked him to remove his hands from his pockets. At one 8 point, asked Mr. Jefferson if he had any weapons and asked him 9 if we could pat him down for weapons. Once we attempted to do 10 this, Mr. Jefferson's entire body tensed up, and he shifted his 11 weight to one foot as if he was going to run. 12 Q. All right. And what, if anything, did you do at that point? 13 A. At the same time, Mr. Jefferson was looking over at the 14 vehicle he arrived in, which Ms. Hawk had entered. Agent Price 15 and Agent Johnson had made contact with her at that vehicle. 16 Mr. Jefferson continued looking over at that vehicle -- 17 Q. Let me ask you this. Is this based on your own observance? 18 A. Yes, ma'am. 19 Q. Okay. Go ahead, please. 20 A. At one point, Mr. Jefferson made a comment about his wife 21 had nothing to do with this. 22 Q. Okay. Let me stop you for just a moment and go back. You 23 said that you and Agent Nemmo -- 24 A. Yes, ma'am. 25 Q. Is that N-E-M-M-O?</p>	<p style="text-align: right;">25</p> <p>1 Q. And at -- had you asked him any questions at that point? 2 A. I asked if he had any weapons on him. 3 Q. Did you ask him anything else about his drug activity -- 4 A. No, ma'am. 5 Q. -- or what he was doing, anything of that nature? 6 A. No, ma'am. 7 Q. And you said that he made a statement at that point; is that 8 correct? 9 A. Yes, ma'am. 10 Q. And what was that statement? 11 A. That she had nothing to do with this or his wife had nothing 12 to do with this. 13 Q. Had you placed him in handcuffs at that time? 14 A. After that statement was made, I believe he was placed in 15 handcuffs and advised that it was for officer safety based on 16 him trying to, at one point, get to the rear of the vehicle and, 17 at one point, what appeared to be is him about to run. 18 MS. REDMOND: Judge, I believe that's all the 19 government has for this witness. 20 THE COURT: Ms. Cooper? 21 CROSS-EXAMINATION 22 BY MS. COOPER: 23 Q. Mr. Whiten, you had indicated that there had been other 24 times surveillance had taken place by you or your agency on 25 Mr. Jefferson; is that correct?</p>
<p style="text-align: right;">24</p> <p>1 A. Yes, ma'am. 2 Q. -- made contact with Mr. Jefferson? 3 A. Yes, ma'am. 4 Q. Or attempted to make contact with him. 5 A. Yes, ma'am. 6 Q. At the same time that you are attempting to make contact 7 with Mr. Jefferson, Agents Price and -- 8 A. Howard Johnson. 9 Q. -- are attempting to make contact with Ms. Hawk; is that 10 correct? 11 A. Yes, ma'am. 12 Q. Okay. What's going on with the second female? 13 A. She had went to her vehicle. And I believe Agent Johnson 14 made contact with her while Agent Price made contact with 15 Ms. Hawk. 16 Q. Are you able or were you able to hear the -- what was going 17 on with Agent Price and Agent Johnson and the two individuals 18 they were making contact with? 19 A. No, ma'am. 20 Q. So you don't know independently of any conversations that 21 they were having at that time; is that correct? 22 A. No, ma'am. 23 Q. You had indicated that you had patted or attempted to pat 24 Mr. Jefferson down for officer safety; is that correct? 25 A. Yes, ma'am.</p>	<p style="text-align: right;">26</p> <p>1 A. Yes, ma'am. 2 Q. On how many occasions, to your knowledge? 3 A. Within the last couple of weeks leading up to this, at least 4 six or seven times. Within the last three months, at least 30 5 times. 6 Q. Could you please tell the Court what different circumstances 7 occurred on December 6th, 2002, that caused you to approach 8 Mr. Jefferson and the fact that you did not on the other 9 occasions? 10 A. On the other occasions, at that particular business there 11 was never no one in the business. It was never open. There was 12 never cars in front or persons inside the business. On that 13 particular occasion, what led to us making contact with 14 Mr. Jefferson is that -- his pulling up in the vehicle, getting 15 into the one car, seeing us, and not getting in that car and 16 trying to make it to a second car. Went to Mr. Jefferson. 17 Tried to approach Mr. Jefferson. He wouldn't let us approach 18 him by trying to get to the vehicle. If he had have fled the 19 other direction or -- you know, it may have been different. But 20 he tried to make it to the vehicle, which based on officer 21 safety and, you know, the history of Mr. Jefferson's -- the 22 history I knew of Mr. Jefferson, we made contact with him. 23 Q. Is it your testimony of the 30 times that surveillance took 24 place you never saw Mr. Jefferson? 25 A. Not at that business.</p>

<p style="text-align: right;">27</p> <p>1 Q. And is it correct that -- is it correct that your testimony 2 is you're basing the stop and detainment of Mr. Jefferson on the 3 fact that he appeared that he wanted to flee? 4 A. No, ma'am, not just that reason. 5 Q. What would be your other reasons for the stop? 6 A. Based on the information that he was using the business to 7 sell cocaine. He was using the red-and-white older-model 8 Caprice that was parked there to transfer cocaine. Based on 9 information that we had from confidential informants, reliable 10 informants, and other law enforcement agencies. 11 Q. Who were those informants, Mr. Whitten? 12 MS. REDMOND: Objection. That goes beyond the purpose 13 and scope of this hearing. 14 THE COURT: I'm not sure it does. He says that the 15 reason he was surveilling the business in the first place was 16 because of information he received. And the reason he 17 approached Mr. Jefferson was because of information he had about 18 what was going on at the business. Officers can't just walk up 19 to anybody on the street and stop them and pat them down. They 20 have to have probable cause to do so, some reason to believe. 21 And if all Mr. Jefferson was doing was -- if all he did was to 22 avert his course from one vehicle to another, that alone would 23 not have been reason to stop him. So he has to tell where he 24 got the information from and make a showing of reliability. 25 That's what Terry was all about.</p>	<p style="text-align: right;">29</p> <p>1 confidential and reliable informant. I'm not familiar with his 2 name. Sergeant Franklin has his name. However, we used this 3 individual along with Sergeant Franklin from the sheriff's 4 office to make a phone call to Mr. Jefferson and ordered a 5 quantity of crack cocaine. This deal never did pan out for 6 reasons unknown. That was approximately 60 days before this. 7 I'm not familiar with that subject's name. I couldn't get in 8 touch with Franklin yesterday about it. 9 Q. (Ms. Cooper, continuing:) All right. If I could, may I 10 just direct some questions to that confidential informant, 11 please? 12 A. Uh-huh. 13 Q. Mr. Whitten, you prepared a case summary -- 14 THE COURT: One moment. 15 MS. COOPER: I'm sorry. 16 THE COURT: I'm not sure what the relevance of what you 17 just said is. You just said you used one from Sergeant 18 Franklin. Was he the person who told you about Mr. Jefferson? 19 THE WITNESS: Yes, ma'am. We made a call to -- 20 THE COURT: The pertinent thing is not -- the pertinent 21 issue here, Agent Whitten, is not what that agent did that 22 didn't lead anywhere. The pertinent information here is what 23 information did that person provide you about Mr. Jefferson. 24 THE WITNESS: Yes, Your Honor. 25 THE COURT: Tell us that.</p>
<p style="text-align: right;">28</p> <p>1 Q. (Ms. Cooper, continuing:) Do you want me to repeat the 2 question? 3 A. Yes, ma'am, please. 4 Q. If you would, please tell us the names of the confidential 5 informants that you deemed to be reliable -- 6 THE COURT: Let's start, Ms. Cooper -- 7 MS. COOPER: Yes, ma'am. 8 THE COURT: -- by having him tell why he relied on 9 them. 10 MS. COOPER: Yes, ma'am. 11 THE COURT: We'll get to the names. 12 Q. If you would, please tell us -- 13 THE COURT: And how many were there? 14 THE WITNESS: I can name three of them. 15 THE COURT: Let's refer to them right now as A, B, and 16 C. 17 THE WITNESS: Yes, ma'am. 18 MS. REDMOND: Your Honor, if you wouldn't mind, all of 19 that has been turned over, actually, and I believe names have 20 been turned over to Ms. Cooper in discovery. 21 THE COURT: Well, fine. Then refer to them by name. 22 THE WITNESS: Yes, ma'am. 23 A. Back several months before this incident occurred, myself 24 and other agents had contact with an Investigator Franklin from 25 the Russell County Sheriff's Office. He turned over a</p>	<p style="text-align: right;">30</p> <p>1 THE WITNESS: He stated that on many occasions he had 2 purchased ounces of crack cocaine from Mr. Jefferson. On this 3 particular occasion, I believe the phone call that -- he had 4 related to us that he had asked for \$100 worth of crack cocaine 5 and that he had been to a location on Brickyard Road in Phenix 6 City and purchased cocaine from Mr. Jefferson several times. 7 Q. (Ms. Cooper, continuing:) Okay. Are we talking about 8 confidential informant A? 9 A. Yes, ma'am. 10 THE COURT: What's the name? Let's just use the name. 11 Who is it, Ms. Redmond, the one he got from Sergeant 12 Franklin? Who is that? 13 MS. REDMOND: Your Honor, I am looking for it. 14 That's -- I don't know who that is. I thought we were going to 15 be talking about Dewayne. 16 THE WITNESS: We are. 17 THE COURT: Is that who it is? 18 THE WITNESS: No, ma'am, not -- 19 Q. (Ms. Cooper, continuing:) Is it Reginald Davis? I mean I 20 don't know. 21 A. That's -- Reginald Davis is going to be C. 22 Q. Okay. Reginald Davis is C. 23 A. Yes, ma'am. 24 Q. You don't know the name of A. 25 A. No, ma'am.</p>

<p style="text-align: right;">31</p> <p>1 Q. Did you have contact with A yourself?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. You had contact with a reliable confidential informant and</p> <p>4 you don't know his name?</p> <p>5 A. He wasn't my informant. I was just -- I was just part of</p> <p>6 the surveillance team.</p> <p>7 Q. Officer Whitten, in your case summary that was provided to</p> <p>8 me in the discovery, information is in there that states an</p> <p>9 informant stated he could buy cocaine from Jefferson. Several</p> <p>10 attempts were made to use this informant with no success.</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. Is that confidential informant A?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. And you believe that he's reliable even though he could make</p> <p>15 no buy from Mr. Jefferson?</p> <p>16 A. Another law enforcement agent had used this subject and</p> <p>17 stated that he was reliable.</p> <p>18 Q. But you have no personal knowledge other than what an</p> <p>19 officer told you.</p> <p>20 A. No, ma'am.</p> <p>21 Q. And no --</p> <p>22 THE COURT: Who is that officer?</p> <p>23 THE WITNESS: That's Sergeant Franklin.</p> <p>24 THE COURT: And who is Sergeant Franklin?</p> <p>25 THE WITNESS: He's a Muscogee -- I mean a Russell</p>	<p style="text-align: right;">33</p> <p>1 whether or not she was a convicted felon is entirely irrelevant</p> <p>2 to what I have to decide. I'm interested in how he came to rely</p> <p>3 upon her and in whether or not she had done or said anything in</p> <p>4 the past that established reliance or disestablished reliance.</p> <p>5 MS. COOPER: Yes, ma'am.</p> <p>6 THE COURT: But in the context of what we're talking</p> <p>7 about, her criminal record is not of -- it's not of a lot of</p> <p>8 consequence.</p> <p>9 MS. COOPER: I apologize.</p> <p>10 THE COURT: Unless her criminal record put her in touch</p> <p>11 with the defendant. And if it did, please say it.</p> <p>12 THE WITNESS: Yes, ma'am.</p> <p>13 THE COURT: Let's not try -- let's not conduct this</p> <p>14 proceeding as though there are 12 people sitting over there.</p> <p>15 MS. COOPER: Yes, ma'am.</p> <p>16 THE COURT: Because I have a specific task I have to</p> <p>17 do. I have specific findings I have to make. And I wish that</p> <p>18 you would, in the vernacular, cut to the quick.</p> <p>19 MS. COOPER: Yes, ma'am.</p> <p>20 Q. (Ms. Cooper, continuing:) Have you used Christy Redman in</p> <p>21 the past as a confidential informant?</p> <p>22 A. Yes, ma'am, I have.</p> <p>23 Q. And of those times that you've used Christy Redman, how many</p> <p>24 of those times ended with a conviction of a defendant?</p> <p>25 A. This particular informant was used by myself twice. On both</p>
<p style="text-align: right;">32</p> <p>1 County deputy.</p> <p>2 Q. Who is confidential informant B that you relied upon?</p> <p>3 A. Her name is Christy Redman.</p> <p>4 Q. And I apologize. I need to go back. Is confidential</p> <p>5 informant A a convicted felon?</p> <p>6 A. Not that I'm aware of. I'm not -- I'm not sure.</p> <p>7 Q. You don't know.</p> <p>8 A. I wasn't the case agent that worked it.</p> <p>9 Q. Do you know if he currently has criminal charges pending in</p> <p>10 any court?</p> <p>11 A. I believe at that time he did, but I'm not sure what.</p> <p>12 Q. And I'm sorry. Confidential informant B, Christy Redman --</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. -- did you have direct contact with Christy Redman?</p> <p>15 A. Yes, ma'am, I did.</p> <p>16 Q. What, if anything, did you learn from Christy Redman that</p> <p>17 formed a basis for your stop on December 6th?</p> <p>18 A. She had stated that she had purchased cocaine in the past</p> <p>19 from a subject known as Buck. Buck was identified as Wendall</p> <p>20 Jefferson.</p> <p>21 Q. And is Christy Redman a convicted felon? Do you know?</p> <p>22 A. Not that I know of. She was -- she did have a charge at the</p> <p>23 time that she --</p> <p>24 THE COURT: Counsel, let me stop you here. Let me stop</p> <p>25 both of you. This is a motion to suppress. I'm not a jury. So</p>	<p style="text-align: right;">34</p> <p>1 times a quantity of narcotics was seized. The information that</p> <p>2 she gave was -- had proven reliable. Two arrests were made and</p> <p>3 two arrests are pending trial now.</p> <p>4 Q. Never a conviction at this point.</p> <p>5 A. No, ma'am. They're on the trial docket for the month of</p> <p>6 June.</p> <p>7 Q. Now, confidential informant three you said was a Reginald</p> <p>8 Davis?</p> <p>9 A. Yes, ma'am. Dewayne Reginald Davis.</p> <p>10 Q. Did you have contact directly with Mr. Davis?</p> <p>11 A. Yes, ma'am, I did.</p> <p>12 Q. Did you use him in investigation or --</p> <p>13 A. Yes.</p> <p>14 Q. -- sting operations?</p> <p>15 A. Yes, ma'am. He was used in one investigation that I did.</p> <p>16 Q. And did that result in a conviction of that defendant?</p> <p>17 A. That's still an ongoing investigation. Information was</p> <p>18 proven reliable that he gave.</p> <p>19 Q. Mr. Whitten, you have shown us on the video display of this</p> <p>20 business where you were parked.</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. And I'm going to ask you, sir, did your vehicle remain in</p> <p>23 that parking place during the entire time that you approached</p> <p>24 Mr. Jefferson and the other people?</p> <p>25 A. Yes, ma'am, it did.</p>

<p style="text-align: right;">35</p> <p>1 Q. You never pulled your vehicle behind the vehicle</p> <p>2 Ms. Jefferson was standing at and prevented her from leaving?</p> <p>3 A. No, ma'am.</p> <p>4 Q. At any point in time, did Mr. Jefferson flee?</p> <p>5 A. No, ma'am.</p> <p>6 Q. You stated you did not -- none of the other officers had any</p> <p>7 weapons drawn; is that correct?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. And was Mr. Jefferson or any of the other individuals placed</p> <p>10 in handcuffs prior to a frisk of their person?</p> <p>11 A. No, ma'am.</p> <p>12 Q. They were placed in handcuffs after they were patted down?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. Did you find any weapons on their person?</p> <p>15 A. Not on their persons.</p> <p>16 Q. Did you find any weapons in any vehicle?</p> <p>17 A. Not any weapons.</p> <p>18 Q. Then why did you place them in handcuffs at that point?</p> <p>19 A. At the point when Mr. Jefferson was placed into handcuffs</p> <p>20 was when he was making the statements over to Sergeant Price's</p> <p>21 area that she had nothing to do with this. Based on that</p> <p>22 statement and his demeanor and attempting to get to the rear of</p> <p>23 the vehicle, he was placed under handcuffs. While he was being</p> <p>24 placed under handcuffs is when Sergeant Price yelled over at us</p> <p>25 to place him in handcuffs.</p>	<p style="text-align: right;">37</p> <p>1 MS. COOPER: Judge, I was just attempting to lay out a</p> <p>2 foundation for an additional --</p> <p>3 THE COURT: But you don't have to do that. This is a</p> <p>4 suppression hearing. If you have a question, ask it.</p> <p>5 MS. COOPER: Yes, ma'am.</p> <p>6 THE COURT: Is there any involvement of this second</p> <p>7 female in this?</p> <p>8 THE WITNESS: Other than being in the business with the</p> <p>9 wife, no, ma'am.</p> <p>10 THE COURT: Do you know of any involvement with her?</p> <p>11 MS. COOPER: No, ma'am.</p> <p>12 THE COURT: So let's not refer to her anymore. Don't</p> <p>13 talk about her.</p> <p>14 MS. COOPER: Nothing further.</p> <p>15 THE COURT: Ms. Redmond, any redirect?</p> <p>16 MS. REDMOND: No, ma'am.</p> <p>17 THE COURT: Step down.</p> <p>18 Next witness?</p> <p>19 MS. REDMOND: Agent Price.</p> <p>20 THE CLERK: Agent Price, please come to the courtroom.</p> <p>21 THE COURT: Unless you have some reason to believe that</p> <p>22 Agent Price has a different version of what happened up to the</p> <p>23 time of the stop, please don't review it.</p> <p>24 MS. REDMOND: Yes, ma'am.</p> <p>25 THE COURT: And Ms. Cooper, I will not hold you to</p>
<p style="text-align: right;">36</p> <p>1 Q. And the --</p> <p>2 THE COURT: What was he under arrest for then?</p> <p>3 THE WITNESS: At that point is when Sergeant Price</p> <p>4 found evidence in the vehicle that Mr. Jefferson had got out of.</p> <p>5 THE COURT: Price was, in the meantime, searching the</p> <p>6 vehicle that Hawk was sitting in after Hawk consented.</p> <p>7 THE WITNESS: Yes, ma'am.</p> <p>8 THE COURT: And at that -- when he found something in</p> <p>9 there --</p> <p>10 THE WITNESS: He yelled.</p> <p>11 THE COURT: -- he yelled to you to place Jefferson in</p> <p>12 handcuffs.</p> <p>13 THE WITNESS: Yes, ma'am.</p> <p>14 THE COURT: Go on.</p> <p>15 Q. Were there other people present in the area?</p> <p>16 A. There was a subject by the name of -- I believe her name was</p> <p>17 Andrea, the other person that was in the business. There</p> <p>18 were -- there's a pizza place at the other end of the restaurant</p> <p>19 (sic). There was, I believe, one or two employees that were in</p> <p>20 that business at the time and no one else.</p> <p>21 Q. Did you see anyone near the Blimpee station -- Blimpee</p> <p>22 store?</p> <p>23 A. Not --</p> <p>24 THE COURT: One moment. What does this have to do with</p> <p>25 this search and probable cause for the search?</p>	<p style="text-align: right;">38</p> <p>1 cross-examination on -- solely on the direct. If you have some</p> <p>2 reason to believe that Agent Price had something else to say</p> <p>3 about the surveillance before the stop, you may do so. I just</p> <p>4 want to avoid duplicative testimony about the same thing.</p> <p>5 JAMES PRICE, the witness, having been previously</p> <p>6 sworn, testified, as follows:</p> <p>7 DIRECT EXAMINATION</p> <p>8 BY MS. REDMOND:</p> <p>9 Q. Would you state your name for the record?</p> <p>10 A. James Price.</p> <p>11 Q. And are you employed?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. How are you employed?</p> <p>14 A. I'm a sergeant with the Harris County Sheriff's Department.</p> <p>15 Q. Were you involved in an investigation of Wendall Jefferson?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. Okay. And did that take place on December 6th, 2002?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. And did that take place at a location known as Head to Toe</p> <p>20 Studios in Phenix City, Alabama?</p> <p>21 A. Yes, ma'am, it did.</p> <p>22 Q. Agent Price, who out there did you make contact with?</p> <p>23 A. We made contact --</p> <p>24 Q. No. I'm asking specifically who you made contact with.</p> <p>25 A. The first person I made contact with was a female later</p>

<p style="text-align: right;">39</p> <p>1 identified as Jennifer Hawk.</p> <p>2 Q. And do you know what, if any, relationship Ms. Hawk has to</p> <p>3 Mr. Jefferson?</p> <p>4 A. She stated that she was his wife.</p> <p>5 Q. How did you come into contact with Ms. Hawk?</p> <p>6 A. We had been conducting surveillance on the business. Then</p> <p>7 once they exited the business, I approached her.</p> <p>8 Q. And what happened or what occurred as you approached her?</p> <p>9 A. She was sitting in the vehicle that we saw the subject that</p> <p>10 we had been watching pull up in. She was --</p> <p>11 Q. Is that Mr. Jefferson?</p> <p>12 A. Yes, ma'am, it is.</p> <p>13 Q. Okay. And she was sitting on -- where in the vehicle?</p> <p>14 A. She was in the driver's side.</p> <p>15 Q. Okay. What happened as you approached?</p> <p>16 A. As I approached, other agents exited my vehicle. Two went</p> <p>17 to Mr. Jefferson's location, and Agent Johnson went to another</p> <p>18 female's location. As I was approaching Ms. Hawk, she</p> <p>19 approached me and asked me what was going on.</p> <p>20 Q. She got out of the vehicle?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. She walked up to you?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. Asked you what was going on?</p> <p>25 A. Yes, ma'am.</p>	<p style="text-align: right;">41</p> <p>1 Agent Whitten and Nemmo to put cuffs on Mr. Jefferson for</p> <p>2 officer safety. And then I also put my cuffs on Ms. Hawk and</p> <p>3 told her that it was for officer safety. And then I advised</p> <p>4 Agent Johnson to put cuffs on the other female.</p> <p>5 Q. Did all of the agents put cuffs on their individual people?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. Did Ms. Hawk make any other statements at that point?</p> <p>8 A. She stated she didn't know anything about what was in the</p> <p>9 vehicle.</p> <p>10 Q. Did you hear any other statements being made from any of the</p> <p>11 other -- from the other two individuals out there in handcuffs?</p> <p>12 A. I heard nothing from the female that was with Agent</p> <p>13 Johnson. Mr. Jefferson kept yelling, my wife has nothing to do</p> <p>14 with this. My wife has nothing to do with this.</p> <p>15 Q. What, if anything, did you do after -- with Ms. Hawk after</p> <p>16 she was placed in handcuffs?</p> <p>17 A. Okay. At that time, I -- like I said, I retrieved the</p> <p>18 cocaine. I showed it to Agents Nemmo and Whitten. A patrol</p> <p>19 unit had pulled in while we were doing -- while we had started</p> <p>20 this, and we --</p> <p>21 Q. Had you-all called the patrol unit?</p> <p>22 A. No, ma'am.</p> <p>23 Q. Okay. Go ahead.</p> <p>24 A. And what we did is we put Mr. Jefferson in the backseat of</p> <p>25 the patrol car. And then Agent Whitten came up to me, and I</p>
<p style="text-align: right;">40</p> <p>1 Q. What did you tell her, if anything?</p> <p>2 A. I identified myself and told her I was Sergeant Price with</p> <p>3 the Metro Narcotics Task Force, that we had received information</p> <p>4 that Mr. Jefferson was running a drug business from Head to Toe.</p> <p>5 Q. What, if anything, was her response?</p> <p>6 A. She said she didn't know anything about any drug business.</p> <p>7 I said, do you mind if I check your vehicle? I said,</p> <p>8 Mr. Jefferson pulled up in it. I said, do you mind if I check</p> <p>9 your vehicle? She said -- I said, do you have any narcotics,</p> <p>10 any weapons, anything in your vehicle? She said, no. I said,</p> <p>11 well, do you mind if I check? She said, no, go ahead.</p> <p>12 Q. And you did that.</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. What, if anything, did you find?</p> <p>15 A. Once I opened the door, the first thing that I noticed was a</p> <p>16 strong smell of ether. And that's used in the processing of</p> <p>17 cocaine. And then I noticed a blue Wal-Mart shopping bag</p> <p>18 sitting on the passenger side.</p> <p>19 Q. What, if anything, did you do at that point?</p> <p>20 A. I then reached over and picked up the bag, looked in it, and</p> <p>21 saw a Ziploc bag that contained a large quantity of powder</p> <p>22 cocaine.</p> <p>23 Q. What, if anything, did you do at that point?</p> <p>24 A. At that point, then, I stepped back out -- I had reached</p> <p>25 over through the driver's side. I stepped back out, and I told</p>	<p style="text-align: right;">42</p> <p>1 showed him the suspected cocaine. And he advised Ms. Hawk of</p> <p>2 her rights, and then we asked for a consent of the Head to Toe</p> <p>3 Studio.</p> <p>4 Q. And did she give consent?</p> <p>5 A. Yes. We used a written form on that, and she signed it.</p> <p>6 Q. Okay. And did it clearly indicate that it was Head to Toe</p> <p>7 that you wanted to search?</p> <p>8 A. Yes.</p> <p>9 Q. Was there any other consent that you requested and that</p> <p>10 Ms. Hawk gave to search anything else?</p> <p>11 A. Yes. After we searched Head to Toe, we found out that she</p> <p>12 had a house on Wright Road, which is also in Phenix City,</p> <p>13 Alabama. We asked her if she would be willing to sign a consent</p> <p>14 for that residence. She stated she would. And we went to 121</p> <p>15 Wright Road, and she signed a consent for that residence.</p> <p>16 Q. Are you still -- while the written consent is being</p> <p>17 executed, are you-all still out at Martin Luther King Parkway?</p> <p>18 A. We did the consent for Head to Toe at Martin Luther King</p> <p>19 Parkway. Then we went to the residence and had -- read her the</p> <p>20 same form and had her sign that.</p> <p>21 Q. You took her to the residence?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. What, if anything, did you find in Head to Toe?</p> <p>24 A. There was --</p> <p>25 THE COURT: Before you testify about that, what is</p>

<p style="text-align: right;">43</p> <p>1 Hawk's interest in Head to Toe?</p> <p>2 THE WITNESS: She stated she was the owner of the</p> <p>3 business.</p> <p>4 THE COURT: She told you that?</p> <p>5 THE WITNESS: Yes.</p> <p>6 THE COURT: Thank you. Proceed.</p> <p>7 Q. What, if anything, did you find in Head to Toe?</p> <p>8 A. We found a submachine gun pistol, I think a couple -- couple</p> <p>9 or three bags of -- plastic bags with cocaine residue. We took</p> <p>10 several photos just of the -- the shop.</p> <p>11 Q. Let me go back for just a moment. Did you have -- or did</p> <p>12 Ms. Hawk indicate who was the owner of the vehicle, the Impala,</p> <p>13 I believe it was, that she was in the driver's seat?</p> <p>14 A. She told me it was her vehicle. She had just bought it.</p> <p>15 THE COURT: That she had just bought it?</p> <p>16 THE WITNESS: Yes, ma'am.</p> <p>17 Q. Let's go back for just another moment. You said that when</p> <p>18 you opened the car door, you smelled ether?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. Are you familiar with ether?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. How are you familiar with ether? How did you become</p> <p>23 familiar with it?</p> <p>24 A. I've worked -- I had worked narcotics for 12 years, and I</p> <p>25 was very familiar with the smell of powder cocaine and also the</p>	<p style="text-align: right;">45</p> <p>1 THE COURT: How much?</p> <p>2 THE WITNESS: I'm not sure of the total. I thought it</p> <p>3 was over two ounces of crack cocaine.</p> <p>4 Q. Where did you find it in the residence?</p> <p>5 A. There was a back bedroom. I think Agent Spear actually</p> <p>6 found the crack cocaine. There was a computer desk, and it was</p> <p>7 in a white plastic bag up -- up in a drawer up under the</p> <p>8 computer desk.</p> <p>9 Q. If you recall, was Ms. Hawk present in the residence when</p> <p>10 the drugs were found or the guns were found?</p> <p>11 A. Yes. She was at the residence when the drugs --</p> <p>12 Q. Was she in the residence?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Did Ms. Hawk make any other statements to law</p> <p>15 enforcement about her knowledge of either the guns or the drug</p> <p>16 evidence located?</p> <p>17 A. I basically remember her saying that her and Mr. Jefferson</p> <p>18 were having problem -- marital problems because of his drug</p> <p>19 dealing and that they were separated for some time and they were</p> <p>20 trying to work things out.</p> <p>21 Q. Do you remember her saying anything or indicating her</p> <p>22 knowledge of the guns?</p> <p>23 A. I believe she stated that she had bought the guns from an ad</p> <p>24 in the newspaper or something to that effect.</p> <p>25 Q. Do you recall if she said for what purpose she bought the</p>
<p style="text-align: right;">44</p> <p>1 smell of crack cocaine.</p> <p>2 Q. When you looked in the bag, how did you come to the</p> <p>3 conclusion or belief that what you were looking at was cocaine?</p> <p>4 A. From my knowledge as a narcotics investigator.</p> <p>5 Q. Did you do any field tests on that substance?</p> <p>6 A. I don't recall if any --</p> <p>7 Q. Did you.</p> <p>8 A. No, I did not. No, ma'am.</p> <p>9 Q. You said that -- let me ask it this way. How was Ms. Hawk</p> <p>10 transported to the residence?</p> <p>11 A. Actually, I don't -- I don't recall.</p> <p>12 Q. What, if anything, was found at the residence?</p> <p>13 A. At the residence, we also found another machine gun pistol,</p> <p>14 a submachine gun pistol, a double-barrel shotgun, some scales,</p> <p>15 and a quantity of crack cocaine.</p> <p>16 Q. Was all of that evidence impounded?</p> <p>17 A. Yes, ma'am, it was.</p> <p>18 Q. Was the drug evidence sent to a forensics laboratory for</p> <p>19 analyzation?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. Were the guns impounded?</p> <p>22 A. Yes, ma'am.</p> <p>23 THE COURT: You actually found crack cocaine at the</p> <p>24 residence?</p> <p>25 THE WITNESS: Yes, ma'am, we did.</p>	<p style="text-align: right;">46</p> <p>1 guns?</p> <p>2 A. I think Agent Whitten asked her about the guns, and she</p> <p>3 stated that Wendall couldn't -- Mr. Jefferson couldn't buy them</p> <p>4 because he was a convicted felon.</p> <p>5 Q. You had indicated that it was your -- that you remembered</p> <p>6 that Ms. Hawk had said that they had been -- she and</p> <p>7 Mr. Jefferson had been separated; is that correct?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. Do you recall if Ms. Hawk in any way indicated that</p> <p>10 Mr. Jefferson resided at that house or who resided at the</p> <p>11 residence?</p> <p>12 A. She stated they were trying to get back together and they</p> <p>13 were both back at the residence. I remember when we went to the</p> <p>14 residence, there was -- there were -- there was a Christmas tree</p> <p>15 and a bunch of Christmas presents and baby items. And I believe</p> <p>16 when -- I remember when we went in, there was a video game, a</p> <p>17 Playstation II video game, that was still going when we got</p> <p>18 there.</p> <p>19 Q. Was anybody at the residence when you arrived?</p> <p>20 A. No, ma'am.</p> <p>21 Q. And you had indicated that there were some baby items. Do</p> <p>22 you know whether or not Mr. Jefferson and Ms. Hawk have a child?</p> <p>23 A. That's one reason she stated that they were trying to make</p> <p>24 things work out, because they did have a child together.</p> <p>25 Q. Was it a baby? Do you know?</p>

<p style="text-align: right;">47</p> <p>1 A. I want to say it was probably about two or three years old. 2 Maybe not that old. A young baby, because I found -- I 3 photographed baby items I saw at the house, diapers, bottles. 4 THE COURT: Relevance, Counsel? 5 MS. REDMOND: It's beyond the scope of my question. 6 THE COURT: Move on. 7 MS. REDMOND: Thank you. Nothing further for this 8 witness. 9 THE COURT: Ms. Cooper? 10 MS. COOPER: Yes, ma'am. 11 CROSS-EXAMINATION 12 BY MS. COOPER: 13 Q. Agent Price, you had indicated in your testimony that you 14 had been part of a previous surveillance of Mr. Jefferson; is 15 that correct? 16 A. Yes, ma'am. 17 Q. On how many occasions did you surveil Mr. Jefferson? 18 A. The business or the residence? 19 Q. Him personally. 20 A. We had been by -- I hadn't actually seen Mr. Jefferson 21 personally. We tried to make a drug buy one time, and he wasn't 22 at the residence. And then we had been by the business several, 23 several times. 24 Q. So this incident at Head to Toe was the first time you or 25 your officers had actually made physical contact with him?</p>	<p style="text-align: right;">49</p> <p>1 where he has indicated that the vehicle you and the agents were 2 in was parked. Is that approximately correct? 3 A. That looks about correct. Yes, ma'am. 4 Q. Where was the vehicle, your vehicle, when you encountered 5 Mr. Jefferson? 6 A. After we pulled out when he saw us? 7 Q. Yes. 8 A. I -- I pulled -- can you see what I'm doing? Ms. Hawk's 9 vehicle was pulled right towards the front door. I pulled 10 almost directly behind it, but not behind it. I mean the bumper 11 was -- my bumper was not to her bumper. 12 Q. It's true that she was not free to move her vehicle or could 13 not at that time. Would that be a true statement? 14 A. She could have backed out. Yes, ma'am. 15 Q. Okay. But your vehicle did not remain in that parking 16 place. You moved it at the time you initiated contact with 17 these subjects; is that correct? 18 A. That's correct. 19 Q. Now, it's my understanding that your testimony is that 20 Ms. Jefferson -- Ms. Hawk gave you verbal permission to search 21 the vehicle that she was standing next to; is that correct? 22 A. She was actually sitting in the vehicle when I approached. 23 Q. And you asked her to exit the vehicle, and she did. 24 A. No. She approached me and said, what's going on. She 25 seemed to be upset.</p>
<p style="text-align: right;">48</p> <p>1 A. Yes, ma'am. 2 Q. Do you have any personal knowledge of any confidential 3 informants who had given information to you about Mr. Jefferson? 4 A. Sergeant Franklin with the Russell County Sheriff's 5 Department -- 6 Q. I'm asking you. Do you have any personal contact or 7 information that a confidential informant gave personally to 8 you? 9 A. Yes, ma'am. What I was saying was Sergeant Franklin turned 10 an informant over to us to try to make a buy from Mr. Jefferson. 11 Q. Was that successful? 12 A. No. 13 Q. And did you talk with that informant? 14 A. Yes, ma'am, I did. 15 Q. Do you see the picture on the screen that has been admitted 16 into evidence? 17 A. Yes, ma'am, I do. 18 Q. According to the testimony of Mr. Whitten, the vehicle -- 19 THE CLERK: Use your finger -- 20 MS. COOPER: I'm sorry. 21 THE CLERK: -- on the screen. Just put your finger on 22 the screen. 23 MS. COOPER: I apologize. 24 Q. According to Mr. Whitten's testimony -- I've got an arrow 25 there. It may not be exactly correct. But in that vicinity is</p>	<p style="text-align: right;">50</p> <p>1 Q. And at some point in time she gave you verbal consent -- 2 A. Yes, ma'am. 3 Q. -- to search that vehicle, correct? 4 A. That's correct. 5 Q. Where did you find contraband? 6 A. The bag with the cocaine? 7 Q. Yes. 8 A. In the passenger-side seat, front passenger-side seat. 9 Excuse me. 10 Q. What kind of bag was it in? 11 A. It was a blue Wal-Mart bag. 12 Q. Were there any contraband in plain sight? Could you see 13 anything out of the Wal-Mart bag, or did you have to open the 14 Wal-Mart bag? 15 A. I want to say that the Wal-Mart bag was kind of loosely 16 tied -- I mean, you know how you put the plastic together and 17 just loosely tie it. I want to say that that's the way it was. 18 Q. You had to open the bag to find the contraband. Would that 19 be correct? 20 A. That would be correct. 21 Q. Okay. Did you find any ether in the vehicle? 22 A. No, ma'am. I didn't find any ether. 23 Q. Did you find any weapons in any of the vehicles? 24 A. Didn't find any weapons in the vehicle. Found some bullets 25 in the Caprice that Mr. Jefferson was heading at -- heading to.</p>

<p style="text-align: right;">51</p> <p>1 Excuse me.</p> <p>2 Q. My final question to you, Agent Price, is just for</p> <p>3 clarification, was Mr. Jefferson or any of the subjects placed</p> <p>4 into handcuffs prior to you finding the contraband?</p> <p>5 A. I was told that Mr. Jefferson -- not in my presence.</p> <p>6 Ms. Hawk was placed in handcuffs after I found the contraband,</p> <p>7 and I hollered across the parking lot for them to place</p> <p>8 Mr. Jefferson in handcuffs for officer safety.</p> <p>9 Q. So your testimony is they were not placed in handcuffs until</p> <p>10 after the contraband was found.</p> <p>11 A. My -- the woman I was talking to, Ms. Hawk, was not. And</p> <p>12 the woman Agent Johnson was talking to was not. And I didn't</p> <p>13 see them place handcuffs on Mr. Jefferson. I was told later</p> <p>14 that they had placed handcuffs on him prior to me saying place</p> <p>15 him in handcuffs for officer safety.</p> <p>16 Q. So one of your coworkers has told you that he was placed in</p> <p>17 handcuffs previous to the contraband being found.</p> <p>18 A. That's correct.</p> <p>19 MS. COOPER: Thank you.</p> <p>20 MS. REDMOND: No further questions from the government.</p> <p>21 THE COURT: This witness may step down. Thank you.</p> <p>22 THE WITNESS: Thank you, Your Honor.</p> <p>23 MS. REDMOND: Nothing further from the government.</p> <p>24 THE COURT: Witnesses, Ms. Cooper?</p> <p>25 MS. COOPER: Yes, ma'am. Andrea Johnson.</p>	<p style="text-align: right;">53</p> <p>1 A. I came to visit my cousin and her husband. We were going to</p> <p>2 go to a comedy act later on that night.</p> <p>3 Q. And who is your cousin?</p> <p>4 A. Jennifer Hawk.</p> <p>5 Q. At what time did you leave that business, approximately, if</p> <p>6 you remember?</p> <p>7 A. After everything was over with?</p> <p>8 Q. No. When did you exit the door? I'm sorry. When did you</p> <p>9 exit to leave that night?</p> <p>10 A. Oh. About 8:20.</p> <p>11 Q. And at that time, did anyone approach you or did you see</p> <p>12 anything?</p> <p>13 A. I went to my car. And as I got in, a car pulled behind -- a</p> <p>14 truck pulled behind me and blocked me in and got out.</p> <p>15 Q. And did someone approach you?</p> <p>16 A. Yes. Someone approached my car, asked me to step out the</p> <p>17 car, and told me to step to the back of my car.</p> <p>18 Q. Did you comply?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. What happened next?</p> <p>21 A. He asked me for ID, put me in handcuffs, and told me that he</p> <p>22 needed to put me in handcuffs for my safety -- for his safety.</p> <p>23 Q. And do you see the picture that is on the screen that has</p> <p>24 been previously admitted --</p> <p>25 A. Yes, ma'am.</p>
<p style="text-align: right;">52</p> <p>1 THE CLERK: Andrea Johnson, please come to the</p> <p>2 courtroom.</p> <p>3 THE COURT: Proceed.</p> <p>4 ANDREA JOHNSON, the witness, having been previously</p> <p>5 sworn, testified, as follows:</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MS. COOPER:</p> <p>8 Q. Please state your name.</p> <p>9 A. Andrea Johnson.</p> <p>10 Q. And if you would, please speak loudly. These proceedings</p> <p>11 are being recorded.</p> <p>12 Ms. Johnson, where do you reside?</p> <p>13 A. In Hampton, Georgia.</p> <p>14 Q. How old are you?</p> <p>15 A. 26.</p> <p>16 Q. Are you employed?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. Where do you work?</p> <p>19 A. St. Joseph's Mercy Care Services.</p> <p>20 Q. Where is that located?</p> <p>21 A. In Atlanta, Georgia.</p> <p>22 Q. On December 6th, 2002, did you have occasion to be at a</p> <p>23 business named Head to Toe in Phenix City, Alabama?</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. What was your purpose in being at that business?</p>	<p style="text-align: right;">54</p> <p>1 Q. -- as United States Exhibit #1 and also labeled as</p> <p>2 Defendant's Exhibit #1?</p> <p>3 A. Uh-huh.</p> <p>4 Q. And does that picture accurately represent the business</p> <p>5 known as Head to Toe?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. We have previously had an arrow here. Can you see that on</p> <p>8 the screen?</p> <p>9 A. Uh-huh.</p> <p>10 Q. There has been testimony that that was where the officers'</p> <p>11 vehicle was initially parked. Do you agree with that?</p> <p>12 A. I don't know where the car was parked.</p> <p>13 Q. In the vicinity.</p> <p>14 A. But that's what --</p> <p>15 Q. Okay. You didn't notice it? I'm sorry.</p> <p>16 A. Yeah. I didn't notice it.</p> <p>17 Q. Okay. Now, I'm going to make another arrow here, if I can.</p> <p>18 Would that indicate to you where the vehicle that Ms. Hawk</p> <p>19 approached be located?</p> <p>20 A. Yes.</p> <p>21 Q. Would that be correct?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. And would it be correct that your vehicle would be where I</p> <p>24 have made the next mark there? Would that be correct or not?</p> <p>25 A. No, ma'am.</p>

55

1 Q. Okay. I'm sorry. Could you tell us where your vehicle was?

2 A. It was parked on the right side of Jennifer's car.

3 Q. Okay. So on the opposite side.

4 A. Yes, ma'am.

5 Q. If I now bring a mark there, would that be correct?

6 A. Correct.

7 Q. And during this encounter with law enforcement, would you

8 have been standing the majority of the time behind the vehicle

9 or at the side of the vehicle?

10 A. Behind the vehicle.

11 Q. Now, how far were you from Ms. Jefferson -- Ms. Hawk --

12 excuse me -- during this encounter with the officer?

13 A. Maybe five feet. We were -- the cars were parked right next

14 to each other, and we were both standing at the rear of the car.

15 Q. And were you both in handcuffs?

16 A. Yes, ma'am.

17 Q. And at any time did you see any officers draw any guns?

18 A. No.

19 Q. Did they have guns present? Do you know?

20 A. I don't recall. I think they had them on their sides.

21 Q. At any point in time was your vehicle searched?

22 A. Yes, ma'am.

23 Q. And did you give permission for your vehicle to be searched?

24 A. Yes, ma'am.

25 THE COURT: What's the relevance of this?

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1 MS. COOPER: I'm sorry.

2 THE COURT: None whatsoever.

3 MS. COOPER: I'm sorry.

4 Q. Did you hear any conversations that Ms. Hawk had with any of

5 the officers?

6 A. Some conversations off and on, because the --

7 Q. What did you hear, if anything?

8 A. I just recall them asking her what does she know about

9 this.

10 Q. Were you able to observe the officers remove anything from

11 the vehicle where Ms. Hawk was standing?

12 A. Yes.

13 Q. What did you observe?

14 A. A plastic bag.

15 Q. Were you in close enough proximity to know where the bag was

16 found?

17 A. In the front of the car.

18 Q. At any point in time -- I'm sorry. Let me rephrase that.

19 Where Mr. Jefferson was, were you able to observe him?

20 A. Yes.

21 Q. At any point in time did you see Mr. Jefferson flee or

22 attempt to flee?

23 A. No, ma'am.

24 Q. Was a pat-down search conducted of Mr. Jefferson?

25 A. I don't recall.

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1 Q. Was one conducted of Ms. Hawk? Do you know?

2 A. I don't recall.

3 Q. And do you have any knowledge as to whether Ms. Hawk was in

4 handcuffs at the time that the search took place or not?

5 A. She was. Yes.

6 MS. COOPER: That's all, Your Honor.

7 THE COURT: Ms. Redmond?

8 MS. REDMOND: Limited, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. REDMOND:

11 Q. Ms. Johnson, did you hear Mr. Jefferson making any

12 statements? Was he saying anything?

13 A. Yes.

14 Q. What was he saying?

15 A. Let my wife go. She has nothing to do with this.

16 Q. And did you -- were you close enough to hear if Ms. Hawk was

17 saying anything?

18 A. Yes. She -- she wasn't responding to him. No. She didn't

19 say anything.

20 Q. She wasn't answering Mr. Jefferson.

21 A. Unh-unh.

22 Q. Were the officers having lengthy conversation with her?

23 A. No. They were just searching the car.

24 Q. Okay. Had you been to the house out on -- I think it's

25 Wright Road?

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1 A. Yes. I've been out there.

2 Q. Whose house is that?

3 A. Jennifer's and Wendall's.

4 Q. And that car that Ms. Hawk was in, was that her car?

5 A. Yes, ma'am.

6 Q. Okay. And that business, Head to Toe, whose business is

7 that?

8 A. Jennifer's.

9 MS. REDMOND: Nothing further.

10 THE COURT: Any redirect?

11 MS. COOPER: No, Your Honor.

12 THE COURT: You may step down, Ms. Johnson.

13 Next witness?

14 MS. COOPER: Towanna Lewis.

15 THE CLERK: Towanna Lewis, please come to the

16 courtroom.

17 THE COURT: How do you spell that?

18 MS. COOPER: Your Honor, I believe it's T-A-W-A-N-N-A.

19 I'll have to ask Ms. Lewis for certain.

20 THE COURT: Is Ms. Johnson excused?

21 MS. REDMOND: The government has no further.

22 THE COURT: Ms. Cooper?

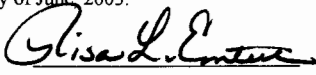
23 MS. COOPER: Yes, ma'am.

24 THE COURT: Ms. Keith, you may advise her that she's

25 excused. She may come back into the courtroom or leave.

<p style="text-align: right;">59</p> <p>1 THE CLERK: Towanna Lewis, please come to the 2 courtroom. 3 THE COURT: Is Ms. Lewis here? 4 MS. COOPER: Yes, ma'am. 5 THE COURT: Please advise Ms. Johnson that she's 6 excused. She may come back into the courtroom or leave, 7 Ms. Keith. 8 THE CLERK: Ms. Johnson, you are excused, or you may 9 come back into the courtroom. 10 MS. COOPER: Take the witness stand, please, right up 11 there. 12 THE COURT: Was this witness present on 12/6/02? 13 MS. COOPER: Yes, ma'am. Yes, ma'am. 14 THE COURT: Proceed. 15 TOWANNA LEWIS, the witness, having been previously 16 sworn, testified, as follows: 17 DIRECT EXAMINATION 18 BY MS. COOPER: 19 Q. State your name, please. 20 A. Towanna Lewis. 21 Q. Would you please spell Towanna? 22 A. T-O-W-A-N-N-A, Lewis, L-E-W-I-S. 23 Q. Ms. Lewis, where do you live? 24 A. Phenix City, Alabama. 25 Q. And are you employed?</p>	<p style="text-align: right;">61</p> <p>1 time, I was, like, talking to my cousin. I said, a customer 2 coming. So the truck was just sitting out there in front of the 3 place. So I said, well, I'm not going to leave out the lobby 4 until the customer come in. So -- 5 Q. Okay. So you observed the vehicle. If you'd let me 6 redirect, I'd appreciate it. You observed the vehicle, correct? 7 A. Yes, ma'am. 8 Q. At some point in time did any commotion or anything occur 9 that caught your attention? 10 A. Could you repeat that again? 11 Q. Did anything occur that caught your attention or draw your 12 attention to the business known as Head to Toe? 13 A. Yes. When Wendall pulled up and when I seen, like, the 14 white truck back back, and it just, like, blocked Wendell's 15 wife's car in. So when I seen that, it was like four policeman 16 got out the car. So that's when I entered the Blimpee's door 17 and I walked closer. 18 Q. Now, you walked outside the business? 19 A. Yes, ma'am. 20 Q. Okay. And looking at the picture on the screen, Ms. Lewis, 21 is there any marker or something that you could tell us you were 22 located near during the time you were outside the business 23 observing this? 24 A. Do you want me to point? 25 Q. Or can you just tell us?</p>
<p style="text-align: right;">60</p> <p>1 A. Yes, ma'am, I am. 2 Q. Where do you work? 3 A. Citi Trends. 4 Q. And how old are you, Ms. Lewis? 5 A. 25. 6 Q. Back on December 6th of 2002, did you have an occasion to be 7 near a business known as Head to Toe in Phenix City? 8 A. Yes, ma'am. 9 Q. And what was your occasion for being near that business? 10 A. I was working at Blimpee's during that time. 11 Q. And there is a picture on the screen. Do you see that 12 picture? 13 A. Yes, ma'am. 14 Q. Is the business shown there, Blimpee, the one that is 15 located next to Head to Toe, the business you were employed at 16 at the time? 17 A. Yes, ma'am. 18 Q. On December 6th, 2002, were you at work at around 8:20 in 19 the evening? 20 A. Yes, ma'am. 21 Q. Did you observe anything unusual that evening? 22 A. Yes. During that time, I was, like, working that evening. 23 And I was, like, sitting in the Blimpee's lobby. And during 24 that time, a white truck, like, pulled up in front of Blimpee's. 25 So I thought maybe it was, like, a customer. So during that</p>	<p style="text-align: right;">62</p> <p>1 A. Okay. I'd say right there almost by the second -- by the 2 second arrow. 3 THE COURT: Tell the Court where you were on the 4 picture. 5 THE WITNESS: Okay. 6 THE COURT: Just tell the Court where you were on the 7 picture. 8 THE WITNESS: Okay. I was, like, basically standing by 9 the second handicapped -- the handicapped sign. 10 THE COURT: The handicapped sign that is in front of 11 Head to Toe? 12 THE WITNESS: Yes, ma'am. 13 THE COURT: All right. 14 Q. And what, if anything, did you observe at that time? 15 A. Okay. During that time, Jennifer -- Jennifer -- when I 16 entered out of Blimpee's, Jennifer was coming out of Head to 17 Toe. So during that time when the truck -- put the truck in 18 reverse and blocked her in. And they asked her to get out the 19 car. And when they asked her to get out the car, they -- 20 Q. Did you hear all this, Ms. Lewis? I don't mean to interrupt 21 you. But did you hear all this? 22 A. Yes, ma'am. 23 Q. Okay. Go ahead. 24 A. Okay. When they asked her to enter out the car, they took 25 her to the back. When they took her to the back, they threwed</p>

<p style="text-align: right;">63</p> <p>1 the handcuffs on her then. When they put handcuffs on her, 2 that's when I was asking her, I said, do you need me to call 3 your mother or anything. So during that time, she wasn't 4 responding to me. So there was another guy -- you know, I 5 think -- I don't know who he was, but there was another guy 6 entered into her car on the driver's side. And they looked up 7 under the seat and they got, like, a blue bag out from up under 8 the seat. 9 Q. And you saw this? 10 A. Yes, ma'am. 11 Q. And once again, let me redirect you. Was Jennifer in 12 handcuffs at the time the search was made? 13 A. Yes, ma'am. 14 Q. Did you hear any conversation to the effect that Jennifer 15 gave permission to search the car, or could you hear anything? 16 A. No, ma'am, I didn't. 17 Q. You did not hear anything? 18 A. No, ma'am. 19 Q. Were you able to observe Mr. Jefferson at any time? 20 A. Okay. When they had done put her in handcuffs, he was 21 walking toward his car. It was parked up on the street. And 22 when he was walking to his car, he got a chance to open the 23 door, but he didn't get a chance to -- you know, to sit inside 24 of the car. Then that's when another guy walked over to him and 25 handcuffed him.</p>	<p style="text-align: right;">65</p> <p>1 A. Yes, ma'am. 2 Q. Okay. Do you know Jennifer? 3 A. Yes. 4 Q. How do you know her? 5 A. By just -- by me working at Blimpee's. She used to come in 6 as a customer. 7 Q. Do you know Mr. Jefferson that way as well? 8 A. No. I just know him around, you know, just going out and 9 stuff. 10 Q. What do you mean just going out? 11 A. I'm -- well, I didn't go -- well, he went to school with one 12 of my cousins. So that's how. And he used to be with one of my 13 cousins. 14 Q. Okay. So you know him from kind of a dating relationship of 15 family. 16 A. Yes, ma'am. 17 Q. All right. You said that when Mr. Jefferson went up to the 18 business, the white truck was put in reverse; is that correct? 19 A. No. The truck was just parked. 20 Q. Okay. I'm sorry. When was the white truck put in reverse? 21 A. Okay. They gave him time enough to get out the car. And 22 when Jennifer entered in her car, they gave her time enough to 23 sit down. And when Jefferson -- when Wendall Jefferson was 24 walking towards his car, when he was walking towards his car -- 25 Q. What was his car again?</p>
<p style="text-align: right;">64</p> <p>1 Q. Did you ever see any indication that Mr. Jefferson ran or 2 attempted to flee or run? 3 A. No, ma'am, I didn't. 4 MS. COOPER: Thank you. 5 CROSS-EXAMINATION 6 BY MS. REDMOND: 7 Q. Ms. Lewis, was it your testimony that you and a cousin were 8 working at Blimpee's that evening? 9 A. Yes, ma'am. 10 Q. And at 8:20 you saw the white vehicle pull up and park? 11 A. Yes, ma'am. 12 Q. Okay. And how long after that was it that you 13 saw Mr. Jefferson? 14 A. Okay. 15 Q. When -- how long? How soon? How long? 16 A. Okay. The -- the truck was, like, parked -- 17 Q. I'm talking about in terms of time. 18 A. Okay. After they pulled up, it was, like, 15 -- about 15 to 19 20 minutes after Jefferson pulled up. 20 Q. So sometime around 8:35 Mr. Jefferson pulled up. 21 A. Yes, ma'am. 22 Q. What was he driving? 23 A. He was driving the Malibu, I think, the Impala, burgundy. 24 Q. And is that the one that's parked right -- that ends up 25 being parked right in front of the business, Head to Toe?</p>	<p style="text-align: right;">66</p> <p>1 A. The Impala. The Impala. 2 Q. Okay. He was walking towards the same car he had gotten out 3 of. 4 A. No. His car was across the street in the parking lot. 5 Q. In the same parking lot? 6 A. No. Where the first arrow was, that was where the burgundy 7 Impala was. 8 Q. Okay. 9 A. Okay. Then across where the sign is is a parking -- 10 Q. Okay. Where the grass on the right-hand side? 11 A. Uh-huh. It's a -- he was walking toward his car. 12 Q. And that's when they approached him? 13 A. Uh-huh. 14 Q. Okay. And you said they put the truck in -- the white truck 15 in reverse. 16 A. Uh-huh. They gave her time enough to get in the car. As 17 soon as she got in the car, he had then started up and then went 18 and backed -- you know, put the car in reverse and pulled around 19 her. 20 Q. Was anybody else out there? 21 A. During that time? 22 Q. Other than the people who got out of the truck, Ms. Hawk, 23 and Mr. Jefferson. 24 A. Her cousin. 25 Q. Did you know her at the time?</p>

<p style="text-align: right;">67</p> <p>1 A. No, ma'am, I didn't.</p> <p>2 Q. Have you had an opportunity to talk with Ms. Hawk about the</p> <p>3 incident out here?</p> <p>4 A. No, ma'am.</p> <p>5 Q. You haven't talked to her at all?</p> <p>6 A. No, ma'am.</p> <p>7 Q. Have you talked to Mr. Jefferson about the incident?</p> <p>8 A. No, ma'am.</p> <p>9 Q. Have you talked to the cousin about the incident?</p> <p>10 A. No.</p> <p>11 Q. You talked to Ms. Cooper about it.</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. When was that?</p> <p>14 A. She was calling me, but I didn't go to her office -- you</p> <p>15 know, her office during that time. I haven't talked to her.</p> <p>16 Q. So you haven't talked to Ms. Cooper about what you're</p> <p>17 telling the Court here today?</p> <p>18 A. Yeah. When we first went to court. When we first went to</p> <p>19 court.</p> <p>20 Q. When was that?</p> <p>21 A. That's what I'm saying. I can't remember the date.</p> <p>22 Q. Okay. And you didn't hear Ms. Hawk saying anything out</p> <p>23 there at all; is that correct?</p> <p>24 A. No, ma'am, I didn't.</p> <p>25 Q. And you were standing right where the handicapped sign is in</p>	<p style="text-align: right;">69</p> <p>1 THE COURT: Well, then she shouldn't testify.</p> <p>2 MS. REDMOND: -- grand jury.</p> <p>3 THE COURT: She should not testify. Her counsel is not</p> <p>4 here.</p> <p>5 MS. COOPER: Your Honor, I represent her in Circuit</p> <p>6 Court of Russell County.</p> <p>7 THE COURT: But you won't be able to represent her</p> <p>8 here.</p> <p>9 MS. COOPER: Yes, ma'am. I understand. I just wanted</p> <p>10 the Court to know that. And I did receive an advisory opinion</p> <p>11 from the Bar before I undertook that.</p> <p>12 THE COURT: Because you will not be able to represent</p> <p>13 her here, Ms. Hawk's interests as a potential defendant in this</p> <p>14 court are not protected and the Court can't permit her to</p> <p>15 testify. She's a likely codefendant of Mr. Jefferson. I don't</p> <p>16 know how it could be limited in a way that both protects her</p> <p>17 Fifth Amendment rights and protects her Sixth Amendment rights.</p> <p>18 There would always be room for counsel later to object -- that</p> <p>19 is, her counsel -- and I'm not going to put -- I'm not going to</p> <p>20 create that risk.</p> <p>21 MS. COOPER: Based upon that, Your Honor, we would</p> <p>22 rest.</p> <p>23 THE COURT: Anything further from the government?</p> <p>24 MS. REDMOND: No, ma'am. No further witnesses to be</p> <p>25 called.</p>
<p style="text-align: right;">68</p> <p>1 front of Head to Toe?</p> <p>2 A. Yeah. The second handicapped.</p> <p>3 Q. Would that have been pretty near to where her car was,</p> <p>4 within five or six feet of her car?</p> <p>5 A. Yes, ma'am.</p> <p>6 MS. REDMOND: Nothing further.</p> <p>7 THE COURT: Any redirect?</p> <p>8 MS. COOPER: No, Your Honor.</p> <p>9 THE COURT: You may be excused. You may remain in the</p> <p>10 courtroom or leave.</p> <p>11 Next witness.</p> <p>12 MS. COOPER: Your Honor, I would call Jennifer Hawk. I</p> <p>13 would make a motion to the Court, Judge, to limit her testimony</p> <p>14 to the issues of consent regarding the search. Ms. Hawk is a</p> <p>15 defendant in the Circuit Court of Russell County on charges</p> <p>16 similar in nature arising out of the same set of facts and</p> <p>17 circumstances as this case.</p> <p>18 MS. REDMOND: In addition, Your Honor, I might add that</p> <p>19 there is a possibility that Ms. Hawk will be added to a</p> <p>20 superseding indictment as a coconspirator. Yes, ma'am. I</p> <p>21 thought I should tell the Court.</p> <p>22 THE COURT: How sure are you that she's going to be</p> <p>23 added? Do you have plans to add her?</p> <p>24 MS. REDMOND: At this point, yes, ma'am, on the June</p> <p>25 15th --</p>	<p style="text-align: right;">70</p> <p>1 THE COURT: Is Government's Exhibit #1 the only exhibit</p> <p>2 to be entered?</p> <p>3 MS. REDMOND: Yes, ma'am.</p> <p>4 MS. COOPER: Your Honor, I had labeled it, and I failed</p> <p>5 to ask the Court to admit it. But if it's possible -- I guess</p> <p>6 it would be repetitive, but yes.</p> <p>7 THE COURT: That's fine. It's admitted.</p> <p>8 THE CLERK: Court is adjourned.</p> <p>9 (Proceedings concluded at 10:34 a.m.)</p> <p>10 *****</p> <p>11 COURT REPORTER'S CERTIFICATE</p> <p>12 I certify that the foregoing is a correct transcript</p> <p>13 from the record of proceedings in the above-entitled matter.</p> <p>14 This 3rd day of June, 2003.</p> <p>15 </p> <p>16 RISA L. ENTREKIN, RDR, CRR</p> <p>17 Official Court Reporter</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>